

#### **405 KAR 1:030. Small operator exemption.**

RELATES TO: KRS 350.450

STATUTORY AUTHORITY: KRS 350.028, 350.450, 224.071

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 requires the Environmental and Public Protection Cabinet to adopt rules and administrative regulations for the strip mining of coal. This administrative regulation sets forth conditions for the exemption of qualified small operators from certain provisions of this chapter.

Section 1. Applicability. If a person or operator is an eligible permittee under Section 2 of this administrative regulation, and intends to engage in strip mining for coal on or after May 3, 1978, the cabinet may certify the permittee as qualified to receive a limited exemption from the provisions of this chapter. The exemption:

(1) Shall not relieve the permittee of his obligations under the terms of the permit, his obligations to comply with the mining and reclamation plan approved by the cabinet, or other obligations imposed upon him by KRS Chapter 350 or other laws and administrative regulations in effect at the time of issuance of the permit;

(2) Shall not relieve the permittee of his obligations imposed by 405 KAR 1:020, Section 5(1)(c), (d) and (e) regarding operations which create imminent danger to the health and safety of the public or significant, imminent environmental harm to land, air or water resources;

(3) Shall not apply to operations conducted pursuant to a permit issued on or after August 3, 1977;

(4) Shall not include the provisions of 405 KAR 1:230, Section 1(1) regarding the placement of spoil or other material on downslopes in steep slope areas; and

(5) Shall exempt the permittee from the requirements of administrative regulations 405 KAR 1:070 through 405 KAR 1:250 of this chapter except as provided in subsection (4) of this section.

Section 2. Eligibility. A permittee is eligible for an exemption under this administrative regulation if:

(1) The actual and attributed production of that permittee is estimated by the cabinet and the Director of the Office of Surface Mining of the U.S. Department of Interior not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and

(2) If that permittee:

(a) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that permittee was 100,000 tons of coal or less from all surface and underground coal mining operations; or

(b) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all surface and underground coal mining operations of that permittee in the average calendar month was an amount of coal which when multiplied by twelve (12) yields a product of 100,000 tons or less; and

(c) In the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.

Section 3. Applications. Applications for an exemption under this section shall be submitted to the Director of the Office of Surface Mining of the U.S. Department of Interior and to the Commissioner, Department for Natural Resources, Frankfort, Kentucky 40601 by March 1, 1978, or such other date as established by the Office of Surface Mining.

Section 4. Request. The request for exemption shall be in the form of an affidavit and shall include:

(1) The name and address of the permittee and of persons who control the permittee by reason of stock ownership or otherwise.

(2) The name, location, Mine Safety and Health Administration identification numbers, and permit numbers of the surface coal mining operations for which exemption is sought, including a statement of the dates each permit was issued or renewed and will expire.

(3) The date and method of creation and business organization arrangement if the permittee is not an individual.

(4) A listing of all surface and underground coal mining operations showing:

(a) Actual production for the year ending July 31, 1977, attributed to the permittee and the inclusive dates of operation.

(b) Estimated production for the year ending December 31, 1978, attributed to the permittee and the anticipated dates of operation.

(5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the permittee has published in a local newspaper of general circulation in the area of each mine for which an exemption is sought once a week for two (2) weeks stating:

(a) That an application for a small operator exemption will be filed, which if granted would exempt the operator from certain environmental protection performance standards in the PL 95-87;

(b) The name and address of the permittee;

(c) The location of the surface coal mining operations to which the exemption will apply; and

(d) That public comments may be submitted to the Commissioner, Department for Natural Resources.

(7) Production from the following operations shall be attributed to the permittee as follows:

(a) All coal produced by operations beneficially owned entirely by the permittee, or controlled by reasons of ownership, direction of the management, or in any other manner by the permittee.

(b) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a five (5) percent interest.

(c) All coal produced by persons who own more than five (5) percent of the permittee or who directly or indirectly control the permittee by reason of stock ownership, direction of the management or in any other manner.

(d) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the permittee.

Section 5. (1) The cabinet shall certify the applicant as qualified for the exemption if, based upon comments from the Department for Natural Resources or the public, or any other information, it finds that:

(a) The permittee has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(b) The exemption will not be inconsistent with state or federal law, regulation or permit terms.

(2) The exemption shall be effective on the date approved and shall remain in effect until expiration of the permit to which it applies, December 31, 1978 or until revoked, whichever is earlier.

(3) The cabinet shall revoke the qualification for the exemption upon finding that the qualification was erroneously issued or that the exempted operation has or will produce more than 100,000 tons of coal per year.

(4) Any person aggrieved by the decision of the cabinet under this section may appeal within thirty (30) days from receipt of that decision to Franklin Circuit Court pursuant to KRS 350.032(2). (4 Ky.R. 374; eff. 5-3-78; Am. 471; 5 Ky.R. 188; eff. 8-23-78; TAm eff. 8-9-2007.)